IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2635 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAKASHCHANDRA KANTILAL PAREKH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 14/09/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the decision

dated 29.1.1996 of respondents No. 1 and 2 communicated by respondent No.3 in rejecting the representation against anomaly in the pay-scale between him and one Shri A.P. Patel. The petitioner has further prayed to direct the respondent authorities to consider '31.12.1980' the date of joining of Shri A.P. Patel, who is junior to the petitioner, as the date of joining of the petitioner for the purpose of initial pay fixation and all other consequential benefits. In the alternative, the petitioner has further prayed for an appropriate writ directing the respondent authorities to advance the date of increment of the petitioner to that of his junior Shri AP Patel with all other consequential benefits, and in the alternative it is also prayed to direct the respondent authorities to step-up the pay of the petitioner to that of his junior AP Patel on his revision of pay under ROP-87 as on 1.12.1987. In the alternative, it is further prayed to direct the respondent

authorities to allow the petitioner to choose '1.1.1988' as the date, which is only one day beyond the last day prescribed, for the purpose of revision of pay as per Rule 7 of Gujarat Civil Services (Revision of Pay) Rules, 1987. The petitioner has further prayed for a declaration that the petitioner is entitled to advance the date of his increment to that of his junior Shri AP Patel with effect from 1.1.1988 and/or he be allowed to the benefit of stepping up of his pay to that of his junior Shri AP Patel as on 1.1.1988 and/or he is entitled to the benefit of relaxation of the rules under Rule 13 of ROP-87 and thereby opt for 1.1.1988 as the date for the purpose of his revision of pay under ROP-87.

2. It is the submission on behalf of the petitioner that after passing through the regular selection process at the G.P.S.C., he was appointed in the Gujarat Statistical Service Class-II under administrative control of the

Director of the Bureau of Economics and Statistics, Gujarat state, vide Government Notification dated 18.12.1980. The Director of Bureau of Economics and Statistics, Gujarat State, Gandhinagar, issued a detailed order on 30.12.1980 calling all the new appointees to report for duties on/at the respective posts/places mentioned in the said order dated 30.12.1980. It is further submitted by the petitioner that he ranked at No.4 in the merit list prepared by Gujarat Public Service Commission and one Shri AP Patel ranked at Sl. No.5 in the said list. It is further submitted by him that the same sequence was shown in the appointment order. It is further submitted that the seniority of the direct recruits as per their merit rank and accordingly in the seniority list of the officers in the cadre of Gujarat Statistical Service Class-II published by respondent authorities on 1.6.1989 the name of the petitioner was shown at Sl. No. 200 and the

name of said Shri AP Patel was shown at Sl. No. 201. It is further submitted by the petitioner that at the time of his appointment in the Gujarat Statistical Service Class-II, the pay-scale of the post in the said cadre was Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. It is further submitted by the petitioner that pursuant to the appointment order dated 30.12.1980 the petitioner joined his duties on 2.1.1981 at Kheda as ordered and his junior AP Patel joined his duties on 31.12.1980 on the very next day of the order at Palanpur as ordered. It is further submitted that as per the instructions of the Government of Gujarat, Finance Department dated 5.11.1971, the next increment was to be drawn from the 1st day of the month irrespective of the date on which it actually falls due in a month. Accordingly, the date of next increment of the petitioner was fixed as '1.1.1982' and the date of next increment of the aforesaid Shri AP Patel was fixed as '1.12.1981' [as he joined the

duty on 31.12.1980]. Thus, according to the petitioner, he was trailing behind his junior by one month so far as the pay was concerned, till the implementation of the ROP Rules, 1987. It is further submitted by him that with the coming into force of ROP Rules of 1987 the pay-scale of the posts in the Gujarat Statistical Service Class-II which was Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 was revised as Rs. 2000-60-2300-EB-75-3200-100-3500. It is further submitted that the pay in the revised scale was to be fixed on the basis of the position in the pre-revised scale as on 1.1.1986, as per the formula laid down in Rule 7 of ROP Rules of 1987. It is further submitted that employees were allowed to give option, if one desires to revise his pay from a later date instead of 1.1.1986, as per Proviso to Rule 5 read with Rule 9(1) of ROP-87 which was further extended upto 31.12.1987. Thus, according to the petitioner, the State Government employees were allowed to choose any

date beneficial to them falling between 1.1.1986 to 31.12.1987 for the purpose of revision of pay. It is submitted by the petitioner that Shri AP Patel objected for 1.12.1987 as the date for his revision of pay in the revised scale. It is submitted that as the pay of Shri AP Patel being Rs. 880 in the pre-revised scale as on 1.12.1987, was revised as Rs. 2,600, in the revised scale as per the given formula in Rule 7 of ROP-87. It is further submitted that the date of increment of the said AP Patel was maintained as 1st December and thus the next date of increment of said Shri Patel was fixed as 1.12.1988. It is further submitted by the petitioner that as the petitioner could have reached the stage of Rs. 880 in the revised scale only on 1.1.1988, which could not be opted for because '31.12.1987' was the last permissible date to opt for, he opted for 1.1.1986 as the date for his revision under ROP-87 and the pay of the petitioner being Rs. 810/- in the pre-revised scale as on 1.1.1986,

was revised to Rs. 2,375 in the revised scale and the date of increment of the petitioner was maintained as 1st January, and thus the date of increment of the petitioner in the revised pay-scale was fixed as 1.1.1987. It is submitted that as there was anomaly in the pay-scale of the petitioner and the said Shri AP Patel (junior to the petitioner) and as the petitioner was trailing behind by 13 months to his junior, Shri AP Patel, a request was made by the petitioner to remove the anomaly in the pay-scale and/or grant the benefit of stepping up, which was rejected, and therefore the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3. Petition is opposed by Ms. Archana Raval, learned AGP on behalf of the respondents. It is specifically denied that as such there is any anomaly between the pay-scale of the petitioner and that of one Shri Patel as alleged. It is

submitted that the ROP Rules of 1987 had come into force with effect from 1st January 1986 and as per Rule 9(1) the employees were allowed to fix their pay by giving option on any date between 1st January 1986 to 31st December 1986 and the above limit was further extended upto 31st December 1987. It is further submitted that thereafter no time limit was extended. It is further submitted that in the G.R. Dated 14th July 1988 by which the above limit was further extended upto 31st December 1987 it was clearly mentioned that “the option once exercised shall be final”. It is further submitted that the anamoly in the pay of Shri Parekh, the petitioner herein and Shri Patel arose due to option of fixing the pay under ROP Rules, 1987. It is submitted that as per the joining date, i.e. 31.12.1980 of Shri Patel, he can opt for fixation of his pay with effect from 31st December 1987, i.e. 1.12.1987 while the petitioner's joining date was 2.1.1981 and therefore he cannot opt for

his pay on 2.1.1981 as per the provision of G.R. Dated 14th July 1988. It is further submitted that as per the above G.R., the last date of option for fixing ROP-87 was 31.12.1987. It is submitted that the alleged anomaly of the pay arose due to late resuming of the duty by the petitioner and the next increment date of the petitioner was fixed accordingly. It is further submitted that there is no question of sanctioning of stepping up as the petitioner was not drawing more pay than his junior Shri Patel prior to implementation of ROP Rules, 1987, i.e., on 1st January 1986. It is submitted that Shri Patel was drawing pay of Rs. 810/- on 31.12.1985 and the petitioner was drawing pay of Rs. 775 on the date 31.12.1985 in the same pay-scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 prior to ROP-87. It is further submitted that the application of the petitioner dated 8th November 1995 has not been accepted by the Government and the same was communicated to the

petitioner vide letter dated 29th January 1996 of the Director of Economics & Statistics, Gandhinagar. It is further submitted that prior to the above representation, the petitioner had represented to the Secretary, GAD (Planning), Gandhinagar, through the Directorate and the said request of the petitioner was not accepted by the Government vide letter dated 1.2.1994 by stating that “this anomaly does not arise due to any rule or order, but this anomaly arises due to late resumption of the duty by the petitioner.” Therefore it is submitted that when a conscious decision has been taken by the respondents, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that one Shri Patel, of whom the grievance is made, has resumed the duty on 31.12.1980. It is also not in dispute that the petitioner resumed the

duty on 2.1.1981. The increments are to be released on 1st of January. In view of the late resumption of duty and considering the ROP Rules of 1987 and G.R. Dated 14th July 1988, the last date for giving the option was 31st December 1987, and as per the said G.R., the last date of option for fixing pay under ROP-87 was 31.12.1987 and accordingly whatever be the salary paid to the petitioner as on 31.12.1987 was on the basis of the pay fixation done as per ROP-87, and whatever be the pay received by the said Shri Patel was as per the pay fixation done. It appears that as the said Shri Patel had resumed the duty earlier one increment was released in favour of said Shri Patel prior to the petitioner and as the petitioner resumed the duty on 2.1.1981 the increment was to be released on next 1st January. Accordingly, the anomaly of the pay arose due to late resumption of duty by the petitioner and the next increment date for the petitioner was fixed accordingly. Therefore, the contention that

there is an anomaly which should be removed cannot be accepted as the same has not arisen due to any rule or order but the said anomaly had arisen due to late resumption of duty by the petitioner. It is also required to be noted that the petitioner did submit an application which was not accepted by the Government. Not only that, but the representation made by the petitioner to the Secretary, GAD [Planning] was rejected after consideration. Hence, there is a conscious decision taken by the Government in its concerned department. The same is neither illegal nor arbitrary. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed. Considering the averments in Para 5 of the Affidavit-in-Reply, as rightly contended by the respondents, there is no question of sanctioning for stepping up. The learned advocate appearing on behalf of the petitioner has relied upon Rule 13 of ROP Rules of 1987.

However, on considering the same, the same will not be of any assistance to the petitioner as the same gives the power to relax the rule in case of any hardship which may be caused in pay fixation while following any rule. However, as stated above, the anomaly has arisen due to late resumption of duty by the petitioner and therefore the said contention is also rejected.

5. For the reasons stated hereinabove, the petition fails and is dismissed accordingly. Rule is discharged, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.